

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Exprès Service Multilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-6

PUBLIC REPRESENTATIVE COMMENTS
(August 25, 2011)

On August 12, 2011, the Postal Service filed a notice pursuant to 39 U.S.C. §3622(c)(10) and 39 C.F.R. §3010.40 *et seq.* concerning a Type 2 rate adjustment.¹ The Notice concerns the Postal Service's accession to the Exprès Service Agreement, a multilateral agreement that covers the delivery of cross-border letters, flats, and small packets (LC/AO) items weighing up to 2 kilograms tendered as Exprès Items and branded with the Common Logo. Notice at 1, Attachment 2. On August 18, 2011, the Commission issued Order No. 812, establishing Docket No. R2011-6 to consider matters raised by the Postal Service's Notice, naming the undersigned as Public Representative, and setting August 25, 2011, as the deadline for filing comments. On August 23, 2011, the Postal Service informed the Commission that at a special Prime Steering Committee meeting on August 12, 2011, the proposal to approve the Postal Service as a Prime member effective October 1, 2011, based upon the Postal Service's accession to the Exprès Service Agreement, was approved.² The Public Representative hereby submits comments.

The Postal Service asks that the Exprès Service Agreement be added to the Market Dominant product list as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 16. The Postal Service states that the delivery-confirmation feature of Exprès Service makes the

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011 (Notice).

² Notice of United States Postal Service Concerning Accession to Exprès Service Agreement, August 23, 2011.

agreement functionally equivalent to an existing agreement with China Post. Notice at 7. The Postal Service also asserts that the *Exprès Service Agreement* will be financially beneficial and will lead to enhanced service performance. *Id.* at 7-8.

Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that these criteria are not implicated by the *Exprès Service Agreement*. Notice at 8-9, 11. The issues remaining are (a) whether the *Exprès Service Agreement* is functionally equivalent to the other agreements included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, (b) whether the *Exprès Service Agreement* improves the financial position of the Postal Service, and (c) whether the *Exprès Service Agreement* will enhance the performance of Postal Service operational functions.

Functional equivalence. At present the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product contains three functionally equivalent agreements. These are an agreement with TNT, an agreement with Hong Kong Post, and an agreement with China Post. The Postal Service states that "the delivery confirmation service included in the *Exprès Service Agreement* is functionally equivalent to the agreement to provide delivery confirmation service in the China Post Agreement." Notice at 13. This fact is insufficient to establish functional equivalence of the two agreements. Delivery confirmation is one of many features of the China Post Agreement. Delivery confirmation is the *only* feature of the *Exprès Service Agreement*.

When the Postal Service was demonstrating the functional equivalence of the TNT, China Post, and Hong Kong Post agreements, it produced a litany of similarities. For example, the TNT and China Post agreements "are constructed from a similar template and contain many similar terms and conditions."³ The Postal Service also stated,

³ Docket Nos MC2010-35, R2010-5, R2010-6, Request of United States Postal Service to Add Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators to the Market Dominant Product List,

If these agreements are added under a single product heading within the First-Class Mail class, then, presumably, other subsequent agreements similar to these instruments *for country-specific inbound flows of Letter Post* would be presented to the Commission under cover of a notice of filing, without the need for a separate classification request accompanying each such agreement.⁴

The Exprès Service Agreement is by no means a “country specific” agreement. Nor is it limited to “inbound flows.” Nor is it “constructed from a similar template.”

Financial improvement. The Postal Service filed under seal Excel spreadsheets showing volumes, costs, and revenues expected from the Exprès Service Agreement. The spreadsheets demonstrate that the Exprès Service Agreement should generate a healthy cost coverage.⁵ However, some of the assumptions underlying the spreadsheets seem a little shaky. The most puzzling assumption is the volume estimate. This volume is sourced to “Exprès Predes volume, July 2010 - June 2011; Supplied by IPC”. IPC is the International Post Corporation. Since the Postal Service was not accepting Exprès pieces in the period July 2010 to June 2011, it is not at all clear how this volume estimate relates to the volume of Exprès pieces the Postal Service will be delivering in the future.

Ordinarily, a cost coverage is independent of volume. If revenue is divided by volume-variable cost, volume cancels out. However, the cost coverage cited above has a large amount of fixed incremental cost included in the denominator. Thus, the cost coverage goes down as volume goes down.

There is also some question as to the unit volume-variable cost used in the spreadsheets. The unit cost is initially taken from a library reference in Docket No. ACR2010. That cost is then blown up to account for inflation. This calculation implicitly assumes that the techniques used to scan barcodes and transmit data for Exprès pieces will be the same techniques used for delivery confirmation in FY 2010. However, the Postal Service states

Notice of Type 2 Rate Adjustments, and Notice of Filing Two Functionally Equivalent Agreements (Under Seal), August 13, 2010 at 12.

⁴ *Id.* at 14 (emphasis added).

⁵ File IB PRIME_Incremental_2011.08 (version 1).xls, Tab 07_Summary, Cell F7 (under seal), August 12, 2011.

that “accession to the Exprès Service Agreement creates an incentive for the Postal Service to improve mail processing and transportation because the agreement provides for remuneration for timely delivery of Exprès items and timely return of scans concerning Exprès items.” Notice at 8. Improvements in mail processing and transportation are costly, as are extra efforts to return more scans on time. The Postal Service’s spreadsheets do not include these extra costs.

Finally, there is some question about the calculation of unit revenue. As noted in the previous paragraph, the Exprès Service Agreement creates an incentive for the Postal Service to improve its on-time performance of delivery and return of scans. Specifically, the amount paid to the Postal Service for delivery of Exprès items varies depending on how frequently the Postal Service meets service standards set out in Annex 6 of the Exprès Service Agreement. Given the value of unit revenue calculated in the spreadsheets,⁶ it appears that that the Postal Service does not expect to meet the minimum percentage standard needed to receive an incentive payment. That is, the dollar value for unit revenue is equal to the SDR value a Post receives if it fails to meet the minimum service standard.

Conclusions. The Commission should initiate a classification proceeding to add a new product to the Market Dominant product list. The Exprès Service Agreement does not fit in the existing Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. The Commission should investigate the accuracy of the volumes, unit costs, and unit revenues used in the Postal Service’s financial spreadsheets.

⁶ File IB PRIME_Incremental_2011.08 (version 1).xls, Tab 04_Prime_Inputs, Cell C13 (under seal), August 12, 2011.

Respectfully submitted,

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